IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 572 of 1998

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIVISIONAL CONTROLLER - Petitioner(s)

Versus

GULAM NABI ALIMIYA SAIYED - Respondent(s)

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Appearance :

MR YOGESH S LAKHANI for Petitioner No(s).: 1.

MR DJ BHATT for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 19/07/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the award dated 04.02.1997 passed by the Labour Court, Himmatnagar in

Reference LCS No.120 of 1996, whereby the petitioner was directed to consider the birth date of respondent workman as 23.11.1935 thereby presuming as if he has worked up to 22.11.1993 entitling him for all the benefits.

2.0 The brief facts of the case are that the respondent herein was working as a Driver with the petitioner Corporation. It is the case of the petitioner that the respondent vide his letter dated 04.11.1988 requested to change his date of birth from 10.03.1931 to 23.11.1935 which was rejected by the petitioner on the basis of the Resolutions No.341 & 729.

2.1 Being aggrieved by the said action, the respondent raised a dispute which ultimately, culminated into a reference. The Labour Court, after hearing the parties, passed the aforesaid directions. Hence, this petition.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. While admitting the matter on 21.09.1999, this Court by way of ad-interim relief had stayed the operation of the impugned award. The said ad-interim relief was confirmed vide order dated 04.10.1999. Therefore, the said award has never come into

operation.

3.1 In a decision of the Apex Court in the case of Secretary & Commissioner, Home Department & ors. v. R. Kirubakaran, it has been observed that if the date of birth of a Public Servant is corrected only on the basis of a report submitted by a Revenue Officer after holding an enquiry, it will introduce uncertainty in public services. Hence, in view of the principle laid down by the Apex Court in the aforesaid decision, the impugned award of the Labour Court is required to be quashed and set aside.

4.0 In above view of the matter, the petition is allowed. The impugned award dated 04.02.1997 passed by the Labour Court, Himmatnagar in Reference LCS No.120 of 1996 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(K. S. JHAVERI, J.)

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